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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195718 *addressee*

DATE: February 7, 1980

MATTER OF: Agency for International Development - Retired
- Annuitants - Waiver of Erroneous Pay *and*

DIGEST: Waiver of erroneous payments by AID to retired annuitants is granted where record shows payments occurred through administrative error. Agency failed to issue notice of change in law until 2 months after change, and there is no showing of fraud, misrepresentation, fault or lack of good faith on the part of the employees.

This decision is in response to a letter from ⁹⁷the General Counsel, Agency for International Development (AID), Department of State, requesting a waiver of erroneous payments of pay under the provisions of 5 U.S.C. § 5584 (1976). The waiver request was made by AID on behalf of 25 retired annuitants who worked for it as consultants during 1977.

The request for waiver by AID was made in view of a change in the law. The International Development and Food Assistance Act of 1977, Pub. L. No. 95-88, 91 Stat. 533, 22 U.S.C. § 2386 (1970), amended section 626(b) of the Foreign Assistance Act of 1961. The Act removed the exemptions which were previously granted to AID consultants from the requirements of the Federal retirement laws which provide for the reduction of annuity or salary for retired Federal employees who are reemployed by the U.S. Government. 5 U.S.C. § 8344 (1976). See U.S. Code Cong. and Ad. News, 95th Cong., 1st Sess. 811 (1977).

The Act became effective August 3, 1977, and AID did not issue a General Notice concerning the change in the law until October 6, 1977. Thus, the AID consultants, who were affected by the change, were overpaid for the period August 3 to October 6, 1977. Waiver is therefore requested for overpayments during this period.

The authority to waive overpayments of pay is contained in 5 U.S.C. § 5584 (1976) which provides that the Comptroller General may waive a claim, the collection of which would be against equity and good conscience and not in the best interests

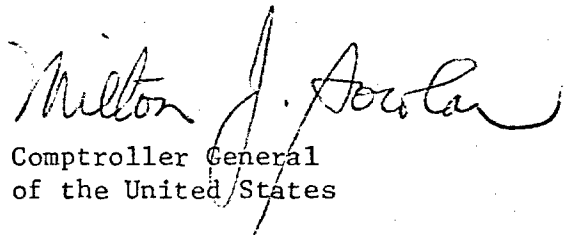
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of the United States. Generally these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. 4 C.F.R. § 91.5(c) (1979).

Our procedures concerning the handling of applications for waiver are outlined in 4 C.F.R. Part 92, and require an investigation and report. See, in particular, 4 C.F.R. § 92.2(b). Although AID has not complied with this requirement, it has provided a list of names of those erroneously overpaid and the amount of each overpayment. Further, the agency, through its General Counsel, has expressed its belief that the collection of the overpayments would be against equity and good conscience. Also, an administrative error occurred since a notice of the change in the law was not issued until 2 months after the effective date of the Act. We also note that the amount of the requested waiver is under \$500 for 6 of the employees involved, and that the head of the agency could have waived this amount. 4 C.F.R. § 91.4(b) (1979). Thus, we believe that there is sufficient information in the record for us to make a determination. B-184947, March 21, 1978; B-188000, October 12, 1977; B-181467, July 29, 1976.

Accordingly, collection of the overpayments in the amount of \$17,599.93 is hereby waived for the 25 employees identified by the General Counsel under the provisions of 5 U.S.C. § 5584 (1976).



For the Comptroller General
of the United States